alleged to have committed the offence with which he is charged. In this case, the 1st appellant was detained while in the act of conveying the passengers and there can be no question of mistaken identity. Further, P.W.3 and P.W.6 had testified that it was the 1st appellant whom they had kept under surveillance for 14 days. In the circumstances, their identification of the 1st appellant at an identification parade would have been redundant. The inability of P.W.3 or P.W.6 to say what the make or colour of the motor vehicle AC 9865 was may be due to the fact that they were at the same time keeping watch over five motor vehicles, but there can be no doubt as to the identity of the car driven by the 1st appellant as P.W.3 had noted down the registration number. As for the weight to be attached to the evidence of D.W.2, there was a material discrepancy between his evidence and that of the 1st appellant to which I have already referred. Finally, I am unable to agree with the submission of counsel that the learned magistrate had erred in law in not drawing an adverse inference under section 114 of the Evidence Ordinance on account of the failure of the prosecution to call or to offer to the defence two of the passengers as witnesses. This is not a case of the prosecution refusing to offer the witnesses to the defence but one of inability to produce them on the day of the trial. The reason for their absence was given in court and defence counsel could have, if he thought their evidence was material, applied for a postponement of the case and asked for the production of the witnesses. Besides, even if the two witnesses were available but not offered to the defence, the only inference that could be drawn is that they were not carried for hire or reward. There were five passengers in all. It would suffice for a conviction under section 92(1) if any one of them was carried for hire or reward.

Taking the evidence as a whole, I am not disposed to disagree with the finding of the learned magistrate. I find no extenuating circumstances to set aside the order of confiscation of the car. The appeals are dismissed.

Appeals dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

YEOH ENG HOCK v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) October 16, 1967]

[Penang — Criminal Revision No. 6 of 1967]

Criminal Procedure — Plea of guilty — Refusal to withdraw plea of guilty — Discretion to allow or refuse a plea to be retracted must be exercised judicially.

The court has power to allow or refuse a plea to be retracted but that discretion must be exercised judicially. In a case where a plea of guilty has been made but before facts have been given, it is the usual practice to allow such plea to be withdrawn. That is an elementary rule because all that an accused person need to do is to refuse to admit to the facts or to enter a qualified plea by pleading other facts which would then be treated as amounting to claiming trial to the charge.

CRIMINAL REVISION.

Haji Suhaimi bin Dato' Haji Kamaruddin (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Ong Hock Sim J.: I have called for this case in revision because upon my attention being drawn to it, I considered that the action of the learned president in refusing to allow the accused to withdraw his plea of guilty was wrong.

In this case the accused was charged:—

"That you on the 10th day of August, 1967 at about 8.30 p.m. at the Polo Ground Western Road, in the District of Georgetown, in the State of Penang, did an act, to wit, by catching the neck and putting a sharp object on the abdomen of Abdul Aziz bin Mohd. Zain, which amounted to an attempt to rob the said Abdul Aziz bin Mohd. Zain, and that you have thereby committed an offence punishable under section 393 of the Penal Code."

The record shows that on the 25th of August, 1967 the charge was read over and explained to the accused, who "pleads guilty to the charge — says he understands nature and consequences of his plea." The case was then adjourned to 8th September, 1967 for facts and sentence. On that day, the record further shows:—

"Accused says he wishes to withdraw plea of guilty".

To that the president recorded:—

"Withdrawal of plea of guilty not allowed — Accused had informed me on 25.8.67 through court interpreter that if his plea was accepted after hearing the facts in this case this court will deal with him according to law."

The president then proceeded to record the facts given by the prosecuting officer which briefly showed that the accused caught the complainant by the neck and at the same time thrust a sharp object against his stomach. The complainant apparently resisted him and there was a short struggle and the accused then ran away. The learned president went on to record:—

"Accused admits facts" "but I did not attempt to rob complainant. I went there just to peep at couples making love. Malay stared at me. I stared at him back. I had drinks that night."

That apparently is his defence. In the struggle that ensued he lost his identity card which fell on the ground and was recovered by the complainant. The accused surrendered himself to the police when he went to claim his identity card after reading newspaper report of the incident.

The authorities are clear that the court has power to allow or refuse a plea to be retracted but that discretion must be exercised judicially. In a case where a plea of guilty has been made

but before facts have been given, it is the usual practice to allow such plea to be withdrawn. That is an elementary rule because all that an accused person need to do is to refuse to admit to the facts or to enter a qualified plea by pleading other facts which would then be treated as amounting to claiming trial to the charge. In this case therefore the learned president was wrong and I have no hesitation in setting aside the conviction of the respondent. I am unable also to understand how the learned president could have gone ahead to convict the accused even though he had apparently pleaded guilty when he had recorded that the accused said "I did not attempt to rob complainant". Therefore, whatever other admission he made to the facts, he made no admission to a necessary ingredient in the charge against him that on the night in question he did an act which amounted to an attempt to rob. All that the evidence disclosed was that for some reason or other, there was a fight and there was use of criminal force by the accused against the complainant but there is no evidence on record that even if he did thrust a sharp instrument on the abdomen of the complainant, he had made any attempt either to snatch complainant's wallet or other property or had made any verbal demand for the handing over of property to him. In those circumstances, to say that the accused had attempted to rob was pure conjecture, although not perhaps unreasonable in the light of what had happened to other courting couples.

The story of the accused that he was only a peeping-tom is the more probable having regard to the time — 8.30 p.m. — and the complainant who apparently was committing the offence of kheluat resented this intrusion and tried to knock some sense into the accused.

I do not however propose merely to set aside the conviction and sentence and remit the accused for trial upon another charge which could be maintained against him — possibly one of using criminal force — as he has been in custody from the 25th of August up to to-day. I accordingly content myself by setting aside the conviction and sentence of six months imprisonment.

Conviction and sentence set aside.

BEECHAM GROUP LTD. v. SIME DARBY SINGAPORE LTD. & ORS.

[O.C.J. (Buttrose J.) October 20, 1967]

[Singapore — Motion in Suit No. 1065 of 1967]

Patents — Infringement of — Importation and sale of drug — Pharmaceutical and clinical differences — — Injunction — Registration of United Kingdom Patents Ordinance (Cap. 181).

The plaintiff company had manufactured in England and produced a semi-synthetic penicillin drug called ampicillin which was covered by patents throughout the world. The second defendants Bristol-Myers Co. also produced ampicillin under licence in the U.S.A. The present action arose from the manufacture and sale of another semi-synthetic penicillin drug called hetacillin by the defendants which the plaintiffs claimed infringed the plaintiffs' Letters Patent and which would cause them substantial injury for which damages would not compensate.

The plaintiffs contended that the present motion was in essence based on the same material facts as the one made in England recently where the English Court of Appeal granted the present plaintiffs an interlocutory injunction against the second defendants. The defendants argued that new evidence which had now been adduced in the present motion had established that hetacillin was different and that that evidence was not before the English Court of Appeal when the case was decided.

Held: (1) there were reasonable grounds for saying that hetacillin was medically equivalent to ampicillin and in the circumstances a *prima facie* case of infringement had been made out;

(2) the pharmaceutical and clinical differences referred to in the affidavits between the two drugs were not matters of any real significance even assuming them to be accepted as such;

(3) on the saccharine principle as laid down by Buckley J. in *Saccharine Corporation Ltd.* v. *Anglo Continental Chemical Works Ltd.*[3] the importation and sale of hetacillin in Singapore was *prima facie* an infringement;

(4) on the evidence before the court greater damage would arise to the plaintiffs by withholding the injunction in the event of them succeeding than to the defendant by granting the injunction in the event of the injunction proving afterwards to have been wrongly granted.

Cases referred to:—

(1) *Van der Lely* v. *Bamfords Ltd.* [1963] R.P.C. 61.

(2) *Clark* v. *Adie* (1873), 10 Ch. D. 667.

(3) *Saccharine Corporation Ltd.* v. *Anglo Continental Chemical Works Ltd.* [1901] 1 Ch. 414.

(4) *Reitmeyer case* [1900] 2 Ch. 659.

(5) *Wilderman* v. *F. W. Berk & Co. Ltd.* (1924), 42 R.P.C. 79.

MOTION.

John Patrick Graham, Q.C. (*A. C. Fergusson* with him) for the plaintiffs.

Richard Kesham Fullagar, Q.C. (*A. P. Godwin* with him) for the defendants.

Cur. Adv. Vult.

Buttrose J.: This is a motion for an interlocutory injunction restraining the defendants and each of them until judgment in this action or further order and whether by their servants, agents or otherwise from advertising, offering for sale, selling or supplying the antibiotic hetacillin or any preparation containing the same or otherwise infringing any or all of the plaintiffs' United Kingdom Letters Patent Nos. 870395 and 873049 registered in Singapore under the